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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,640	01/23/2001	Wim Sweldens	14	3436
22046	7590	02/11/2004	EXAMINER	
LUCENT TECHNOLOGIES INC. DOCKET ADMINISTRATOR 101 CRAWFORDS CORNER ROAD - ROOM 3J-219 HOLMDEL, NJ 07733			MCQUELLAN, JAMES S	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/767,640	SWELDENS, WIM	
	<b>Examiner</b>	<b>Art Unit</b>	M4 3627
	James S McClellan		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### *Amendment*

1. Applicant's submittal of an amendment was entered on December 5, 2003, wherein:
  - claims 1-26 are pending and
  - claim 17 has been amended.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art as set forth in Figure 1 (hereinafter "Admitted Prior Art") in view of U.S. Patent Publication No. 2002/0073013 A1 (Haddad)

The Admitted Prior Art discloses a method for distributing file content via one or more cache providers (30, 35, 40), wherein content providers directly purchase cache resources from said cache providers. Additionally, the Admitted Prior Art discloses redirecting download requests that were initially directed to a content provider, such that the requests will be redirected to at least one contracted cache provider.

The Admitted Prior Art fails to disclose content providers purchasing cache from a third-party market entity allowing at two or more distinct cache providers to collectively provide for

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servicing of download requests, wherein a fee is charged by said cache providers based on a downloaded bandwidth.

Haddad teaches trading bandwidth in an open exchange, wherein allowing multiple cache providers to service the needs of content provider in multiple desired locations (see page 2, paragraph 017)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Admitted Prior Art with bandwidth exchange market as taught by Haddad, because an open exchange will provide lowest cost and best service benefits for the participants.

#### *Response to Arguments*

4. Applicant's arguments filed December 5, 2003 have been fully considered but they are not persuasive.

On page 8, fifth paragraph, Applicant notes "download bandwidth" and "transmission bandwidth" are not analogous because they pertain to different types of operations. The Examiner respectfully disagrees. For purposes of examination, the Examiner believes "download bandwidth" and "transmission bandwidth" are analogous because both measure a rate at which information is accessed over a network. The location of the measurement appears to be the only difference. Download bandwidth is measured at the information's point of origin and transmission bandwidth is merely measured at some point between the origin and endpoint.

On page 9, fourth paragraph, Applicant argues that Haddad fails to disclose trading cache resources. It appears that Applicant is attempting to distinguish cache from bandwidth, but in

claim 8, Applicant claims “the cache resources comprises bandwidth”. Additionally, it appears that Applicant is attempting to argue the references individually instead of arguing the 35 U.S.C. § 103 combination of Applicant’s admitted prior art in view of Haddad. The Examiner relies on Applicant’s admitted prior art to disclose buying and selling cache resources (bandwidth) and merely relies upon Haddad to teach trading bandwidth as a commodity. Even if Haddad fails to disclose the exact same type of bandwidth, the teaching of trading bandwidth as a commodity is still analogous. The fact that Haddad measures bandwidth during transmission as opposed to at download fails to make Haddad non-analogous.

### *Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jim McClellan whose telephone number is (703) 305-0212. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703) 308-5183.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

Commissioner of Patent and Trademarks  
Washington D.C. 20231

or faxed to:

(703) 872/9306 (Official communications) or  
(703) 746-3516 (Informal/Draft communications).

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,  
Arlington, VA, 7<sup>th</sup> floor receptionist.

*James S. McClellan*  
James S. McClellan  
Primary Examiner  
A.U. 3627

jsm  
February 10, 2004